IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.42 OF 2006

IN

CIVIL REVISION APPLICATION NO.452 OF 2001

IN

NOTICE OF MOTION NO.1169 OF 1996

IN

B.C.C.C. L.C. SUIT NO.3486 OF 1997

Mulla Shoeb Saifuddin Baldiwala ...Applicant

Versus

S.K.Saifuddin S.K.Taherbhai
Khorakiwala & Ors. ...Respondents

.....

Mr.Y.H.Muchhala, Sr.Counsel with Ms.Hansa I.Advani i/b Mr.V.S.Master for Applicant.

Mr.Chirag Balsara i/b Mulla & Mulla & Craigie Blunt & Caroe for Respondent No.1.

.....

CORAM: A.M.KHANWILKAR, J.

MARCH 29, 2006.

P.C.

1. Heard Counsel for the parties.

2. By this Application, two reliefs are claimed. The first is to bring on record heirs and legal representatives of Respondent No.2 (Appellant No.3 in C.R.A.) who has died recently on 25th February 2006. As the Application insofar as to bring the heirs of Respondent No.2 on record is concerned, is in time, the same will have to be granted and there is no objection to that extent raised by the Counsel for the Respondent No.1. Accordingly, this relief is granted. Amendment be carried out within two weeks from today.

3. The second relief claimed in this Application is to bring on record heirs and legal representatives of deceased Respondent No.5 (Respondent No.3 in C.R.A.). Counsel for the Applicant, however, points out that it now transpires that the Suit as against said Respondent No.5 (Respondent No.3 in C.R.A.) has abated. He submits that so long as that abatement is not set-aside, the question of moving the present Application does not arise and for which reason, the Applicant will not pursue the present

application, with liberty to move the application at later stage.

4. Respondent No.1/original Plaintiff, however, contends that there is no formal order of abatement of Suit insofar as Respondent No.5 (Respondent No.3 in C.R.A.). It is not necessary for me to go into this controversy. It will be open to the Trial Court to decide the question of abatement in accordance with law.

Disposed of on the above terms.

A.M.KHANWILKAR, J.